

AUG 27 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JULIA C. DUDLEY, CLERK
BY: *[Signature]*
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THOMAS TULLY,)	
Petitioner,)	Civil Action No. 7:18cv00571
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
HAROLD CLARKE,)	By: Michael F. Urbanski
Respondent.)	Chief United States District Judge

testimony. The Circuit Court found the claims defaulted and without merit. The Supreme Court of Virginia refused his appeal.

In 2016, Tully filed a second federal habeas petition, raising the same claims as in his 2015 state habeas petition. See Tully v. Clarke, 7:16cv296 (W.D. Va. May 8, 2017). The court determined that his petition was successive and that his claims were procedurally defaulted and without merit and, thus, dismissed the action. Id. Tully has now filed his third federal habeas petition which the court will dismiss as an unauthorized, successive petition.¹

II.

Under the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), the court may consider a second or successive § 2254 petition only upon specific authorization from the United States Court of Appeals for the Fourth Circuit that the claims in the petition meet certain criteria. 28 U.S.C. § 2244(b). “In the absence of pre-filing authorization [from the Fourth Circuit], the district court lacks jurisdiction to consider a [successive] application.” United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 20

McDaniel, 529 U.S. 473, 485-89 (2000); there is a “new judgment intervening between the two habeas petitions,” Magwood v. Patterson, 561 U.S. 320, 341-42 (2010), In re Taylor, 171 F.3d 185, 187-88 (4th Cir. 1999); or “the facts relied on by the movant seeking resentencing did not exist when the numerically first [petition] was filed and adjudicated,” United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014).² None of these circumstances apply to the instant § 2254 petition because Tully’s first § 2254 petition was adjudicated on its merits and not dismissed for procedural reasons, there has been no new judgment intervening his original and current § 2254 petitions, and the underlying facts on which Tully now relies existed when he filed his first § 2254 petition. Accordingly, the court will grant respondent’s motion to dismiss Tully’s petition without prejudice as successive. The court notes that Tully may seek certification from the United States